

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PATRICK BROGAN

Plaintiff,

v.

TUNKHANNOCK TOWNSHIP, et al.

Defendants.

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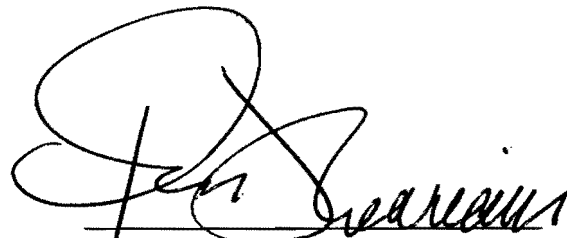
3:14-CV-1690
(JUDGE MARIANI)

ORDER

AND NOW, THIS 14th DAY OF AUGUST 2015, upon consideration of Defendants Tunkhannock Township and John Benjamin Zdaniewicz's Partial Motion to Dismiss Plaintiff's Complaint (Doc. 8) and all accompanying briefs, **IT IS HEREBY ORDERED THAT** the Defendants' motion is **GRANTED IN PART AND DENIED IN PART**; to wit:

1. Defendants' motion to dismiss Counts I, II, and III against Tunkhannock Township for failure to state a claim pursuant to *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978) is **GRANTED IN PART AND DENIED IN PART**, specifically:
 - a. Defendants' motion to dismiss Count I and Count II is **DENIED**.
 - b. Defendants' motion to dismiss Count III is **GRANTED**. Plaintiff's First Amendment Retaliation claim is **DISMISSED WITHOUT PREJUDICE** against Tunkhannock Township on the basis that it fails to properly state a claim under *Monell*.

2. Defendants' motion to dismiss Plaintiff's purported Due Process claims in Counts I and II is **GRANTED**. Any claims under the Fourteenth Amendment are **STRICKEN** to the extent that they present an attempt to state separate and independent causes of action from those that have been properly alleged under the Fourth Amendment.
3. Defendants' motion to dismiss Count III in its entirety for failure to state a claim is **GRANTED**. Plaintiff's First Amendment Retaliation claim is **DISMISSED WITHOUT PREJUDICE**.
4. Defendants' motion to dismiss Plaintiff's Eighth Amendment claim, contained within Count II, is **GRANTED**. The Eighth Amendment claim is **DISMISSED WITH PREJUDICE**.
5. Plaintiff's prayers for relief for punitive damages in Counts I, II, and III are dismissed against Tunkhannock Township, but remain with respect to the claims asserted against Defendant Zdaniewicz in his individual capacity. Plaintiff's prayer for relief for punitive damages in Count IV is stricken.
6. Plaintiff is **HEREBY GRANTED 14 days from the date of this Order** to file a Second Amended Complaint as to Count III.

A handwritten signature in black ink, appearing to read 'Robert D. Mariani', is written over a horizontal line.

Robert D. Mariani
United States District Court Judge